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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,835	01/16/2004	Alain Dunoyer	81083213 (202-0346)	6944

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EXAMINER

ZANELLI, MICHAEL J

ART UNIT

PAPER NUMBER

3661

DATE MAILED: 05/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/758,835

Applicant(s)

DUNOYER ET AL.

Examiner

Michael J. Zanelli

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. The application filed 1/16/04 has been examined. Claims 1-9 are pending.
2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.
3. The disclosure is objected to because of the following informalities: Insert appropriate headings to identify sections of the specification. Also on page 1, line 22 "5,910,565" should be --5,710,565--.
4. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that it fails to point out what is included or excluded by the claim language. This claim is an omnibus type claim.
5. Claim 5/4 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from any other multiple dependent claim (i.e., claim 4). See MPEP § 608.01(n). Accordingly, the claim 5/4 has not been further treated on the merits.
6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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7. Claims 1, 2, 4/(1,2), 5/(1,2), 6, 7 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 2000-118261 (hereinafter JP).

A. As per claims 1, 6 and 9, as best understood JP discloses an adaptive cruise control (ACC) apparatus which includes means for re-engaging the ACC by operation of the accelerator pedal as claimed (Abs). See also description of JP in Kuramochi et al. (6,876,915), col. 1, lines 26-28.

B. As per claims 2 and 7, as above whereby the distance to the preceding vehicle is taken into consideration (Abs).

C. As per claim 4/(1,2), as above whereby the accelerator pedal acts as a switch to manually change operation of the ACC.

D. As per claim 5/(1,2), the disclosed system is mounted in a vehicle (note title).

8. Claims 1, 2, 4/(1,2), 5/(1,2), 6, 7 and 9 are further rejected under 35 U.S.C. 102(e) as being anticipated by Kuramochi et al. (6,876,915).

A. As per claims 1, 6 and 9, Kuramochi discloses an adaptive cruise control (ACC) apparatus (Fig. 2) which includes means for re-engaging the ACC by operation of the accelerator pedal as claimed (col. 6, lines 30-41).

B. As per claims 2 and 7, as above whereby the distance to the preceding vehicle is taken into consideration (col. 6, lines 15-41).

C. As per claim 4/(1,2), as above whereby the accelerator pedal acts as a switch to manually change operation of the ACC.

D. As per claim 5/(1,2), the disclosed system is mounted in a vehicle (col. 4, lines 35-36).

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9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claims 3, 4/3, 5/3 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP or Kuramochi in view of Nakamura et al. (6,311,123).

A. As per claims 3 and 8, JP and Kuramochi are applied as above. The claimed invention differs in that a warning device is provided to alert the driver as to the proximity of the preceding vehicle. However, at the time of applicant's invention it was known in the vehicle art to provide a warning device to alert the driver as to the proximity of a preceding vehicle. As noted in Nakamura at col. 1, lines 60-66, it was known to provide such an alert means in ACC systems of the type exemplified by JP and Kuramochi (*supra*). One of ordinary skill in the art would have found it obvious to

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include a warning means for alerting the driver of a possible collision with a preceding vehicle, thus improving safety.

B. As per claims 4/3 and 5/3, as previously noted above.


12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited documents are of general interest.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Zanelli whose telephone number is (571) 272-6969. The examiner can normally be reached on Monday-Thursday 8:30 AM - 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas G. Black can be reached on (571) 272-6956. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/mjz


MICHAEL J. ZANELLI
PRIMARY EXAMINER